



IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1945

No. 1070

GUIDO TRUCCO,  
*Petitioner,*  
vs.

ERIE RAILROAD COMPANY

**BRIEF OF RESPONDENT IN ANSWER TO PETI-  
TION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF PENNSYLVANIA**

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## ARGUMENT

The Workmen's Compensation Board of Pennsylvania decided this case solely on the theory that the 1939 amendment to the Federal Employers' Liability Act was unconstitutional (R. 29, 30). No suggestion was made by that Board that the petitioner's claim did not fall within the provisions of the 1939 amendment. On appeal to the Court of Common Pleas of Crawford County, that Court held that the 1939 amendment to the Federal Employers' Liability Act was not unconstitutional and that the petitioner was engaged in both intrastate and interstate commerce, with the interstate feature predominating. On the hearing before the Superior Court of Pennsylvania, the petitioner conceded the constitutionality of the 1939 amendment by withdrawing that question from the consideration of the Court. The question of constitutionality was not raised in the Supreme Court of Pennsylvania, nor is it raised in the petition in this Court.

The issue, therefore, is as to whether or not the employment of the petitioner falls under the provisions of the Federal Employers' Liability Act, as amended, which reads as follows:

"Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any

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foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

“Any employee of a carrier, any part of whose duties as such employee shall be the furtherance of interstate or foreign commerce; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter. Apr. 22, 1908, c. 149, Sec. 1, 35 Stat. 65; Aug. 11, 1939, c. 685, Sec. 1, 53 Stat. 1404, Title 45 U. S. C. A. Sec. 51.”

The second paragraph of the foregoing citation constitutes the amendment of August 11, 1939.

The facts in this case are not in dispute. The business of the Erie Railroad Company is that of an interstate carrier operating through the States of New Jersey, New York, Pennsylvania, Ohio, Indiana, and Illinois, by means of the usual railroad equipment and maintenance shops at

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different points on the line for the purpose of maintaining the cars, locomotives and equipment necessary and essential to the operation of its business. One of these shops is located in Meadville, Pennsylvania, where it produces various heavy and light forgings and castings for the maintenance and repair of its rolling stock, consisting of locomotives, cars and other equipment. In Hornell, New York, it maintains an erection shop where the necessary repairs are made on the rolling stock, and at other points on the line and at its terminal points, emergency repairs are made under the supervision of the Hornell erection shop. (R. 18) As a part of the production shop in Meadville, a blacksmith shop is operated and it was in this shop that the alleged accident to the petitioner occurred. On the day of the alleged injury, the blacksmith shop was engaged in the production of strap hangers and dress tender truck hangers to be used in repairing the locomotives and locomotive tenders of the railroad company. These strap hangers and other parts, when produced in the blacksmith shop in Meadville, were shipped to the Hornell erection shop, where they were used for the repair of locomotives and locomotive tenders. Their production in the Meadville shop, and their application to the rolling stock in the Hornell erection shop were essential to the repair and maintenance of interstate facilities, and it is submitted that the workmen who were engaged in their manufacture and production come under the exclusive jurisdiction of the Federal Employers' Liability Act.

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INTERSTATE COMMERCE

The definition of interstate commerce has in recent years been greatly enlarged and extended, and the old-

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fashioned, narrow and strict interpretation is no longer recognized by the courts, nor by the Congress. Formerly, manufacturing was not a part of interstate commerce. More than two years before the enactment of the 1939 amendment to the Federal Employers' Liability Act, the Supreme Court of the United States decided the case of the *National Labor Relations Board against Jones & Laughlin Steel Corporation*, 301 U. S. 1, 57 Sup. Ct. 615, as well as many other cases, wherein it held that the persons engaged in the manufacture of commodities as employees of a company which had plants and warehouses in various states, to which the manufactured articles were shipped for assembly and sale, were engaged in employment which affected interstate commerce. Jones & Laughlin was a purely private enterprise. The respondents in this case is a common carrier actually engaged in interstate business, having shops and repair points in the several states, the maintenance and operation of which are essential to the definitely interstate business in which it is engaged, and certainly the employee of this interstate carrier, who is engaged in the manufacture and production of essential repair and maintenance parts of the interstate facilities of his employer, is engaged in an employment that affects interstate commerce.

The test under the National Labor Relations Act interpreted in the Jones & Laughlin Steel Corporation case, *supra*, as well as under the Federal Employers' Liability Act, is as to whether the employment affects interstate commerce.

*Argument*SCOPE OF THE FEDERAL EMPLOYERS' LIABILITY ACT AND THE  
1939 AMENDMENT

Prior to the enactment of the 1939 amendment to the Federal Employers' Liability Act, the question as to whether or not "transportation" was involved played a prominent part in most of the decisions. Since the amendment, the question of transportation has ceased to be an important element in determining the nature and character of the employment. The purpose of the 1939 amendment was to broaden and liberalize the Act so as to bring within its provisions practically all of the employees of an interstate carrier.

In adjudications under the original Act there had arisen a legal twilight zone. It was that twilight zone that had created chaos and uncertainty and it was to eliminate that twilight zone that Congress enacted the 1939 amendment. Since its enactment, there has been no twilight zone and practically every employee of an interstate carrier is now afforded the benefits and advantages of the Federal Employers' Liability Act, and through that Act, is provided a remedy which is exclusive.

The purpose of the amendment was well stated by the Kansas Supreme Court in *Peggue v. Baldwin*, 121 Pac. 2d. 183, wherein it was held "the purpose of the amendment was to extend the provisions of the Act to cover all of the carrier's employees whose work though not in actual interstate transportation, or a part of it, furthered interstate commerce or in any way affected such commerce directly, closely and substantially." In that case, a workman shoveling cinders from a side track in the yards was held covered by the Federal Act.



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In the case of *Palsaw v. Kansas City Southern Railway Company*, 56 F. Supp. 897, it was held that "the purpose of the 1939 amendment was to broaden and make it clear that if an employee is engaged in services, although by themselves intrastate in character, which in any way further or affect interstate commerce, he comes within the scope of this section."

Under the terms of the Act, it applies to any employee (a) "whose duties as such employee shall be the furtherance of interstate or foreign commerce" and (b) whose duties "shall in any way directly or closely and substantially affect such commerce". In the case at bar, the petitioner was engaged in the manufacture and production of necessary and essential repair parts for the repair and maintenance of the locomotives of the respondent, which were a part of, and were essential to, the interstate commerce being conducted by the employer, and any obstruction to, or interference with, this work that was being performed by the petitioner would be an obstruction of, and interference with, interstate commerce. It is accordingly true that the production of repair parts and their shipment in interstate commerce to the erection shops, (a necessary condition precedent to their application and installation as repairs to the locomotives of the respondent) directly affected the interstate commerce in which the respondent was engaged. It is a notorious fact that whenever the volume of business performed by interstate carriers, or their financial limitations have made it impossible for them to keep up the necessary repairs and properly maintain their equipment, interstate commerce has been seriously affected and the business of persons dependent upon that commerce has been seriously handicapped.

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The Circuit Court of Appeals, Seventh Circuit, in the case of *Shelton v. Thomson*, 148 F. 2d. 1, interprets the 1939 amendment as follows:

"Appellant contends that plaintiff does not come within the protection of the Federal Employers' Liability Act. This Act was amended in 1939 to read:

'Any employee of a carrier, any part of whose duties as such employee shall be the *furtherance of interstate or foreign commerce*; or shall, in any way directly or closely and substantially, affect such commerce as above set forth shall, for the purposes of this chapter, be considered as being employed by such carrier in such commerce and shall be considered as entitled to the benefits of this chapter.' (Italics ours) 45 U. S. C. A. Sec. 51.

"Prior to its amendment the Act provided for the employer's liability to an employee for injury suffered only when the employee was engaged in 'such commerce' which phrase referred to 'commerce between any of the several States.'

"Appellant argues that plaintiff, employed in the railroad's storehouse, operating a crane which hoisted car wheels into position for repair on freight trains, some of which were used in intra- and others in interstate commerce, was not one who could conceivably be said to be engaged in interstate commerce.

"However, we have before us, for construction, the amended act, not the original section. There can be no doubt but that the amendment was intended to broaden the scope of the Act to include employees whose

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work was related to the functioning of interstate commerce. Concededly the relationship between the encompassed occupations and the actual transportation in interstate commerce has become more tenuous as this law has developed. It was this fact, no doubt, that caused Congress to enlarge the scope of the Act by stating that all employments in 'furtherance of interstate \* \* \* commerce' are within the Act. The word 'furtherance' is a comprehensive term. Its periphery may be vague, but admittedly it is both large and elastic. It would not be an undue stretching of it to hold that one who is engaged with others in the process of repairing the car so that it may thereafter be moved in interstate (or by happenstance in intrastate) commerce, is engaged in an occupation 'in furtherance' of interstate commerce.

"A car cannot travel even in interstate commerce without wheels. Ordinarily a car is as usable in interstate as in intrastate commerce. The same crane which plaintiff operated, moved many articles. Some were used on cars which moved in interstate commerce. No one in the employ knew where the car wheel would be used. Perhaps the success of the repair efforts would determine its future use.

"The report of the Senatorial Committee indicates that the amendment was intended to extend the application of the Federal Employers' Liability Act to employees, like plaintiff, who are engaged in work which left them and their attorneys in deepest doubt as to the law which governed their employers' liability and their right to recover damages for injuries which they might receive. The amendment was, we believe, a much

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needed one—and the selection of the phrase ‘furtherance of interstate \* \* \* commerce’ to accomplish the purpose of clarification, an effective and purposeful one.”

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#### ADJUDICATIONS UNDER THE 1939 AMENDMENT

In the case of *Ermin v. P. R. R.*, 36 F. Supp. 936, the Court said:

“There are multitudinous decisions raising hair-splitting interpretations as to whether or not the employee at the time of his accident was actually engaged in interstate commerce. It was to avoid this difficulty that Congress enacted the amendment. It was, undoubtedly, the intent of Congress to include within the scope of the Federal Employers’ Liability Act all employees, even those performing intrastate services whose employment meets the requirements of the Act. It is no longer subject to doubt that Congress had the power to include intrastate employment, which affects interstate commerce, within the scope of the Federal Employers’ Liability Act.”

In the case of *So. Pacific Co. vs. Industrial Comm.*, 120 Pac. 2d. 880, a car repairman was held to be included within the benefits of the amendment. In *Virginia Railway Co. vs. Early*, 130 Fed. 2d. 548, a machinist on his way to work at the time of the accident was held to be engaged in interstate commerce under the amendment. In *Lewis v. Industrial Commission*, 120 Pac. 2d. 886, the Court clearly points out the distinction between the law prior to the 1939 amendment and thereafter. There it was held that switching dead

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cars for repairs was interstate commerce. In the companion case of *So. Pacific vs. Industrial Comm.*, 120 Pac. 2d. 888, the Court held that a freight car builder repairing freight cars, regardless of where the cars operated, was engaged in interstate commerce. In *Wright vs. New York Central*, 263 App. Div. 46, it was held that a boilermaker employed by the New York Central Railroad Company, even though hurt while performing intrastate work, was covered by the amendment. One of the latest cases adjudicating the effect of the 1939 amendment is the case of *Agostino vs. P. R. R.*, 50 F. Supp. 726. In this case the claimant was spreading ballast on a new stretch of track being built to eliminate curves, the new track not yet having been opened to interstate traffic. The Court in its opinion at page 729, says:

“The weight of authority is to the effect that the amendment should be liberally construed so as to extend the protection of this Act to all employees, any part of whose duties further or affects interstate commerce ‘in any way.’ ”

In the very recent case of *Harris v. Missouri Pac. R. Co.*, 149 P. 2d. 342, 158 Kan. 679, it was held that a railway employee injured while loading on a truck barrels containing oil to be used for filling lanterns and cans to oil employer's machinery, including engines used in interstate commerce, was engaged in furtherance of interstate commerce or work directly or closely and substantially affecting such commerce within this section, so that remedy for injury must be sought under this section and not under the Workmen's Compensation Act.

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And in the recent case of *Zimmerman vs. Scandrett*, 57 F. Supp. 799, the Court, in its opinion, states the facts as follows:

"The defendants are operating as a common carrier the railroad company's system which extends from Chicago and Milwaukee westward through various States to the Pacific Coast. The Milwaukee Shops, located in Milwaukee County, are an instrumentality or part of the system and consist of a group of twenty buildings. One of these buildings, known as Round-house No. 1, was used for the housing and repairing of locomotives utilized in interstate as well as intrastate commerce.

"Since July 14, 1920, and until his death on May 3, 1943, John Bangus was employed at the Milwaukee Shops. He was a member of a crew performing maintenance and repair work, such as the repairing of doors, windows and water leaks, digging sewers, and making sidewalks. While at work on the date last mentioned and engaged in repairing the door of Stall 9 of Round-house No. 1, he came into contact with a pipe containing shorted electric wiring and was instantly electrocuted,"

and thereupon the court holds that the 1939 amendment should be liberally construed so as to extend the protection of the Act to all employees any part of whose duties furthers or affects interstate commerce in any way, and that under the facts in the case the exclusive remedy was under the Federal Employers' Liability Act.

The Superior Court of Pennsylvania, in the case of *Scarborough v. P. R. R.*, 154 Pa. Superior Ct. 129, 35 A.

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2d. 603, provides a comprehensive brief for consideration in the case at bar and the following is an excerpt from its opinion:

“(8) Furthermore, we are of the opinion that the work claimant was doing at the moment of his injury ‘directly or closely and substantially’ affected the movement of interstate traffic. It is not necessary under the 1939 amendment that an employee to receive the benefits of the Federal Act be engaged at the time of his injury ‘in \* \* \* transportation \* \* \* so closely related to it as to be practically part of it’ as stated in *Shanks v. D., L. & W. R. Co.*, *supra* (239 U. S. 556, 36 S. Ct. 189, 60 L. Ed. 436, L. R. A. 1916 C. 797).

“(9) It can hardly be said that the adequate lighting of the station is not closely and substantially related to, and does not affect the movement of, interstate transportation. Proper lighting certainly facilitates the handling of baggage and promotes the safety of persons using the trains, and may very reasonably be regarded as a contributing factor to the movement of interstate traffic. True, the lighting fixtures of a station are not instrumentalities that participate directly in the actual movement of transportation, a test applied prior to the 1939 amendment: *Sullivan v. New York, N. H. & H. R. Co.*, *supra*. Nevertheless, from a practical standpoint they may be regarded as essential accessories to interstate passenger travel so that an employee making repairs thereto comes within the broadening language of the present statute reading ‘any part of whose duties as such employee \* \* \* in any way directly or closely and substantially, affect such commerce \* \* \*.’”

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## COMMENT ON PETITIONER'S BRIEF

The petitioner cites at great length cases which were decided prior to the 1939 amendment, none of which are applicable to the issues involved in this case. The 1939 amendment was designed to liberalize the Act so as to avoid a further continuation of the confusion which existed under the original act.

The petitioner on page 9 of his brief cites the case of *New York, N. H. & H. R. Co. vs. Bezué*, 284 U. S. 415, a case which was decided by this Court in 1932. The opinion in that case was written by Mr. Justice Roberts. Again on page 11 of his brief he cites the same case, erroneously attributing the opinion to Mr. Justice Black. In that case, the Court defines the nature of railroad employment and the essentiality of the work of all employees in the maintenance and conduct of interstate commerce in the following words:

“All work performed in railroad employment may, in a sense, be said to be necessary to the operation of the road. The business cannot be conducted without repair shop employees, clerks, janitors, mechanics, and those who operate all manner of appliances not directly or intimately concerned with interstate transportation as such, or with facilities actually used therein.”

In that case, decided before the 1939 amendment, the Court recognized the restricted provisions of the original act which limited its application to employment which involved transportation. The very purpose of the 1939 amendment was to eliminate such a restriction and to recognize that all railroad employment necessary to the conduct of interstate commerce was included under the Act.

Much reliance is placed by the petitioner on the case



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of *Davis v. Department of Labor of Washington*, 317 U. S. 249, 63 Supreme Court Reporter 225. This is a case arising in the State of Washington under the Workmen's Compensation law of that state and involves the question as to whether the State Workmen's Compensation law or the Longshoremen's Act provided relief for the widow of a structural steel worker, who was drowned while working as an employee of a contractor engaged in dismantling an abandoned drawbridge. It involves an issue entirely foreign to the question arising in the case at bar. The background of the issue clearly appears from the following excerpt from the opinion of Mr. Justice Black:

“With the manifest desire of removing this uncertainty so that workers whose duties were partly on land and partly on navigable waters might be compensated for injuries, Congress on October 6, 1917, five months after the Jensen decisions, passed an Act attempting to give such injured persons the ‘rights and remedies under the workmen’s compensation law of any State.’ 40 Stat. 395, 28 U. S. C. A. Sections 41 (3), 371 (3). May 17, 1920, this Court declared the Act unconstitutional. *Knickerbocker Ice Co. v. Stewart*, 253 U. S. 149, 40 S. Ct. 438, 64 L. Ed. 834, 11 A. L. R. 1145. June 10, 1922, 42 Stat. 634, 28 U. S. C. A. Sections 41 (3), 371 (3), Congress made another effort to permit state compensation laws to protect these waterfront employees, but this second effort was also held invalid. *State of Washington v. W. C. Dawson & Co.*, 264 U. S. 219, 58 S. Ct. 749, 82 L. Ed. 1111. March 4, 1927, came the Federal Longshoremen’s and Harbor Workers’ Act, 33 U. S. C. A. Section 901, et seq. Here again, however, Congress made clear its purpose to permit

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state compensation protection whenever possible by making the federal law applicable only 'if recovery for the disability or death through workmen's compensation proceedings may not validly be provided by State law.' "

There is no similarity between the questions of jurisdiction considered in the Davis case and the questions of jurisdiction involved in the case at bar. In that case, Congress itself was making persistent efforts to confer jurisdiction on workmen's compensation authorities and the issue was the constitutionality of that attempt. The Washington Supreme Court held that Congress had not constitutionally conferred this jurisdiction upon the compensation authorities of the State of Washington, and the Supreme Court of the United States reversed the case on the theory that the Congressional legislation was constitutional.

It is respectfully submitted that the 1939 amendment fully clarifies and extends the benefits of the Federal Employers' Liability Act so as to include within its provisions all of the essential maintenance and repair employees of an interstate carrier, and that there no longer remains the twilight zone, which, under the original act, was the source of so much confusion and litigation, and that the lower court interpretations hereinbefore cited are correct interpretations of the 1939 amendment and that they merit approval and acceptance by this Court.

Respectfully submitted,

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